IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4141 of 2007(C)

CRA.459/2006 of SESSIONS COURT, PATHANAMTHITTA
MC.25/2006 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA

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REVN. PETITIONER: PETITIONERS: APPELLANTS

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1. KOCHUMON C VARGHESE, S/O.VARGHESE,
   CHARIVU KALAYIL VEEDU, MYLAPRA MURI,
   MYLAPRA VILLAGE.

2. SHAJI @ SHAJAHAN, S/O.MEERA SAHIB,
   KOONANKATTUVA PURAYIDATHIL VEEDU,
   KUMBAZHA MURI, PATHANAMTHITTA.

BY ADV. SRI.M.T.SURESHKUMAR
SRI.V.V.RAJA

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. C.M. NAZAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 28/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL.R.P. NO. 4141OF 2007

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Dated this the 28th day of November, 2007.

ORDER

The revision petitioners were the sureties for the 1st accused in C.C. No. 346/2004 on the file of the Chief Judicial Magistrate, Pathanamthitta. The bond amount was Rs.20,000/-. Consequent on the non appearance of the accused in C.C No. 346/2004, the Chief Judicial Magistrate initiated proceedings against the petitioners under Section 446 Cr.P.C. After registering M.C. No. 25/2006 they were served with a show cause notice in form No. 48 of Schedule 2 Crl.P.C. They did not have any valid explanation for the non-appearance of the accused or for their failure to produce the accused. Thereupon, the Chief Judicial Magistrate as per order dated 26.09.2006 imposed the bond amount as penalty on each of the revision petitioners. An appeal preferred by them before the Sessions Court, Pathanamthitta as Crl. A No. 459/2006 was dismissed as per judgment dated 02.08.2007. Hence this revision.

2. The learned counsel appearing for the revision petitioners made the following submissions in support of the revision:-

There is nothing to show that the case before the trial court was posted for trial or for answering the charge in which case alone

could that court forfeit the bond consequent on the failure of the accused to appear before the court below. In the absence of the finding that the revision petitioners/sureties had committed violation of any of the conditions of the bond it was impermissible for the trial court to initiate proceedings under Section 446 Cr.P.C against the revision petitioner and impose penalty as ordered.

3. I cannot agree with the above submissions. The bond was admittedly one for appearance of the accused in C.C. No. 346/2004 before the court and executed in terms of Form No.45 of Schedule 2 Cr.P.C. When the bond is for appearance of the accused, the breach of the undertaking in the bond is committed the moment the accused fails to appear without any valid reasons. [See **Kunju Mohammad v. State of Kerala** (1959 KLT 1118), **Kafoor Raja v. State of Kerala** (1973 KLT 45), **C. Rajagopalachar & others v. Government of Mysore** (AIR 1952 Mysore 102) & **Tarni Yadav v. State** AIR 1962 Patna 431] When the accused fails to appear before court the breach of the undertaking to appear before the court is complete and no order of court is necessary for forfeiting the bond. The only other legal requirement is to issue a notice in Form No.48 to the sureties calling upon them to show cause as to why the penalty should not be

imposed. This is because as per the bond executed by them they had undertaken to forfeit to the government the bond amount as penalty in the event of the accused failing to appear before the court.

4. Equally misconceived is the argument that the bond could have been forfeited only if the case was posted for trial or for answering the charge. The expression 'for answering the charge' in Form No. 45 does not mean a posting of the case for framing the court charge. It only means that the accused is called upon to appear for answering the formal acquisition against him. Every posting of the case after the appearance of the accused either on summons or warrant, is for answering the charge against him. A different interpretation can result in absurd situations. For instance, when the trial of the case is summons trial, there is no question of framing charge and the expression "for answering the charge" in the bail bond will then be meaningless since in summons trial it is only the particulars of the offence which is read over to the accused and there is no framing of charge. Hence the said expression can only mean to answer a formal acquisition against the accused. Admittedly, the 1st accused in C.C. No. 346/2004 was absent justifying the initiation of proceedings under Section 446 Cr.P.C against the revision petitioners.

They have no case that they were not given the show cause notice in form No. 48 of Schedule 2 Crl.P.C. If so, the Chief Judicial Magistrate was perfectly justified in imposing the penalty on the revision petitioners. The lower appellate court also was fully justified in dismissing the appeal on being satisfied that the petitioner had no sufficient cause to show in respect of show cause notice issued to him. I find no reason to interfere with the concurrent findings recorded by the courts below.

V. RAMKUMAR, JUDGE.

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